IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5974 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MULI TALUKA PANCHAYAT

Versus

UKABHAI V. CHAUHAN

Appearance:

1. Special Civil Application No. 5974 of 1993

MR DD VYAS for Petitioner No. 1

MRS DT SHAH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr.Dhaval D.Vyas on behalf of petitioner and learned advocate Mrs.D.T.Shah for respondent - workman.

#. In the present petition, the petitioner has challenged the award passed by the labour court, Surendranagar in Reference No.1096 / 1989 [Old No.1983 / 1988] dated 2.11.1992, wherein the labour court has set aside the termination order and granted reinstatement with continuity of service with full backwages of the interim period. This Court has issued Rule on 18th August, 1993 and considering facts and circumstances of the case, stay against reinstatement has been refused but so far as the payment of backwages is concerned, order passed by the labour court concerned has been stayed with further notice as to interim relief. Ultimately, this Court has confirmed the interim relief with further observations that the workman will go and report for reinstatement tomorrow. The workman is present in the Court. The Taluka Development Officer is also present on behalf of the petitioner, who stated that the the workman will be reinstated as and when he reports, as reflected in the order dated 4th October, 1993 passed by this Court.

#. Learned advocate Mr.Dhaval Vyas for the petitioner has submitted that the labour court has not given any reasonable opportunity to the petitioner though there was some correspondence but the labour court has not waited and exparte award has been passed by the labour court granting full reliefs in favour of the respondent workman. Therefore, he submitted that the entire award has been passed by the labour court in absence of the petitioner and the petitioner was not able to represent their case effectively before the labour court and therefore, the matter may be remanded back to the labour court concerned so that the petitioner can avail reasonable opportunity to put up their case before the labour court and the labour court may pass appropriate orders after hearing the petitioner.

#. Learned advocate Mrs.D.T.Shah for the respondent workman has submitted that the labour court has issued various notices to the petitioner to file written statement and to remain personally present before the labour court but no written statement was filed, nor any advocate was engaged by the petitioner and ultimately, in such circumstances, the labour court had not other option except to pass the exparte award and therefore, there is nothing wrong in passing such exparte award passed by the labour court granting full relief in favour of the respondent workman. However, she submitted that at the relevant time when the exparte award was passed by the labour court, the petitioner was having alternative and

effective remedy to approach the labour court under Rule 26-A of the Gujarat Industrial Disputes Rules to file an application for setting aside the exparte award but instead of availing that option, the petitioner has straightaway filed this petition and the same remained pending before this Court and after this long period, if the matter is remanded back to the labour court, it will cause prejudice to the case of the respondent workman as the labour court will re-examine the matter and ultimately the workman is sufferer and not to the petitioner. She also pointed out one another important aspect that at the time when Rule has been issued by this Court, interim relief against reinstatement has been refused by this Court and as a result thereof, by order dated 4th October, 1993, this Court has directed the petitioner to reinstate the respondent workman in service. Accordingly, she submits that vide order on 18th December, 1993, the respondent workman has been reinstated and reported for duty and the respondent workman has been working with the petitioner for more than ten years and by now,the workman might have become the permanent workman of the petitioner Panchayat as a result of afflux of time on the basis of the Government Resolution and therefore, she submits that remanding the matter at this stage, will cause prejudice to the respondent workman and will adversely affect even his reinstatement. However, she submits that in the event if this Court is inclined to remand the matter back to the labour court, Surendranagar then, the matter may be remanded back only on the aspect of the backwages part and not on the issue of reinstatement of the workman as such relief has already been specifically refused by this Court at the time of admission of this matter and by now, a period of more than ten years have passed during pendency of this matter before this Court. Thus, she submits that reinstatement order may be confirmed but if this Court inclines to remand the matter, the matter may only be remanded for backwages part only and reinstatement may not be disturbed on any count.

#. I have considered submissions made by the learned advocates for the respective parties. It is specific contention of the learned advocate Mr.Dhaval Vyas that no opportunity was given to the petitioner before the labour court. But this contention of the learned advocate Mr.Vyas cannot be accepted but it can be said that opportunity was given to the petitioner but the same was not availed by the petitioner before the labour court. However, it requires to be appreciated that the petitioner is statutory body / authority and there might be some difficulty on the part petitioner authority for

remaining absent before the labour court but without going into genuineness of reasons for not remaining present before the labour court, according to my opinion, once this Court has not granted any stay against reinstatement and more than ten years have passed and the workman has remained in service and by passage of time, the responsibility of the workman must have been increased and the workman might have been given status of permanent employee on the basis of the Government Resolution, reinstatement which has not been stayed by this Court, may be considered and confirmed and should not be disturbed by this Court and therefore, the direction of reinstatement granted in favour of the respondent workman by the labour court, in my opinion, the labour court has not committed any error and as such, does not call for any interference by this Court. However, considering the backwages aspects, termination of the respondent workman is dated 31st July, 1988 and award has been passed by the labour court on 2nd November, 1992 and workman has been reinstated on 18th December, 1993, naturally, it is a period for more than 10 years but the petitioner being the statutory authority should not bear any unnecessary burden to the effect that if the workman was employed during the interim period and for that, if reasonable opportunity is given to the petitioner, then it will meet the ends of justice between the parties, without disturbing reinstatement order passed by the labour court. Therefore, according to my opinion, the matter requires to be remanded back to the labour court only to decide the question of backwages of the interim period from the date of termination till the date of award. However, it is made clear that the respondent workman is entitled to full wages with effect from 2nd November, 1992 the date of award till 18th December, 1993 as the same is not being disturbed by this Court but for the interim period from the date of termination till the date of award, is now required to be examined by the labour court after giving reasonable opportunity to both the respective parties. It may also be appreciated that both the parties have also agreed before this Court that they will fully co-operate with the hearing before the labour court and will not ask for any unnecessary adjournment before the labour court.

#. It may be appreciated that before the labour Court, the concerned workman has challenged termination order dated 31st July, 1988. The statement of claim was filed by respondent No.3 wherein the averments made to the effect that respondent workman was working since 13th August, 1985 as daily rated Clerk receiving salary of Rs.1191.00 from the petitioner and his service came to be

terminated on 31st July, 1988, meaning thereby, at least about three years, the respondent remained in continues service with the petitioner. According to the averments made in the statement of claim, at the time of termination, Section 25-F of the I.D.Act has not been followed by the petitioner and as such no notice, nor any notice pay or any other compensation was given to the workman. As against that, no written statement was filed by the petitioner. Thereafter, the workman was examined vide Exh.11 and he deposed before the labour court the facts stated in the statement of the claim that he had completed more than three years continues service and provision of Section 25-F has not been followed at the time of termination of his service. However, there was no cross examination of the workman made by the petitioner and ultimately, the labour court has relied on said deposition and come to the conclusion that termination is contrary to Section 25-F of the I.D.Act, 1947. On the basis of the averments made in the statement of the claim and the oral evidence of the workman as relied by the labour court and in pursuance of the award, the workman was reinstated in the yea 1993 and continued in service even today. Therefore, looking to this finding of fact which remained unchallenged and on that basis, reinstatement order has been passed and the same has been complied with by the petitioner as there is no interim relief granted by this Court against reinstatement. In light of facts and circumstances of the case, according to my opinion, the labour court has rightly set aside the termination order relying upon averments made in the statement of claim and oral evidence of the workman. Therefore, in respect of the direction issued by the labour court granting reinstatement with continuity of service, in my view, the labour court has not committed any error while passing the award of reinstatement. Over and above, considering implementation of the award by the petitioner in a situation when no stay granted by this Court against reinstatement and more than ten years have passed from the date of reinstatement, according to my opinion, direction issued by the Labour Cout granting reinstatement, does not warrant any interference by this Court and therefore, said direction in respect of reinstatement of the workman awarded by the labour is hereby confirmed and not disturbed by this Court.

#. Considering all these aspects, direction issued by the labour court granting full backwages of the interim period from the date of termination i.e. 31.7.1988 till the date of award 2nd November, 1992 is hereby quashed

and set aside. However, the direction as to reinstatement of the respondent workman is confirmed by this Court with further directions to the labour court while remanding the Reference No.1096 / 1989 [Old No.1963 / 1988] to examine the matter for deciding the question of backwages for the period from the date of termination 31st July, 1988 upto 2nd November, 1992 after giving reasonable opportunity to both the respective parties and to pass appropriate orders in accordance with law on or before 31st December, 2003. However, it is observed that it will be open to both the parties to lead any oral and documentary evidence before the Labour Court at Surendranagar and to raise all the legal contentions which are available to both the parties before the labour court. However, the labour court shall have to consider all such contentions as well as oral and documentary evidence, that may be led by the respective parties and to pass appropriate award in accordance with law without being influenced by the observations made by this Court and the fact that this Court has confirmed the order of reinstatement order and the labour court shall accordingly pass the award independently in accordance with law.

In view of above observations, presently petition is partly allowed. Rule is made absolute to the extent indicated above with no order as to costs. It is further directed to the petitioner to pay full wages to the respondent workman with effect from 2nd November, 1992 till 18th December, 1993 to the respondent workman within period of six weeks from the date of receiving the copy of this order.

Date : 7.8.2003 [H.K.Rathod, J.]

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